

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.
TOTAL WEALTH
MANAGEMENT, INC., et al.,

Defendants.

Case No. 15-cv-00226-BAS-DHB

**ORDER GRANTING MOTION
FOR ESTABLISHING
SUMMARY CLAIMS
PROCEDURES, SETTING
CLAIMS BAR DATE, AND
APPROVING PROPOSED
CLAIM FORM**

[ECF No. 124]

Presently before the Court is Receiver Thomas A. Seaman's ("the Receiver") motion for an order (1) establishing summary procedures for the determination of claims against the Receivership Entities; (2) setting a claims bar date for the submission of claims; and (3) approving the Receiver's proposed Claim Form for the submission of claims. ("Motion" (ECF No. 124).) Plaintiff Securities and Exchange Commission filed a response supporting the Receiver's Motion.¹ (ECF No. 129.) For

¹ The Court notes that a receiver appointed in a related state case filed a reply to Receiver's Motion on December 19, 2016. (ECF No. 128.)

1 the reasons set forth below, the Court grants the Motion.

2 DISCUSSION

3 “[A] district court’s power to supervise an equity receivership and to determine
 4 the appropriate action to be taken in the administration of the receivership is
 5 extremely broad.” *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir.
 6 2005) (quoting *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986)). This broad
 7 power includes the discretion to use summary procedures to supervise and administer
 8 the claims process. *See Hardy*, 803 F.2d at 1040 (“[T]he use of summary proceedings
 9 to determine appropriate relief in equity receiverships, as opposed to plenary
 10 proceedings under the Federal Rules, is within the jurisdictional authority of a district
 11 court.”) (citations omitted); *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458
 12 (9th Cir. 1984) (“[T]he traditional rule is that summary proceedings are appropriate
 13 and proper to protect equity receivership assets.”) (citations omitted). Summary
 14 procedures promote judicial efficiency and help maximize recovery by reducing the
 15 time necessary to settle disputes, decreasing litigation costs, and preventing further
 16 dissipation of receivership assets. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir.
 17 1992). Such procedures satisfy due process so long as investors and creditors of the
 18 receivership entities are given adequate notice and a full and fair opportunity to be
 19 heard. *Id.* at 1567; *Hardy*, 803 F.2d at 1040.

20 Here, the Receiver’s proposed summary procedures provide a reasonable and
 21 practicable means of noticing, reviewing, and processing claims. The proposed Claim
 22 Form clearly and concisely explains what investors and creditors must do to properly
 23 submit their claims. (*See Motion*, Exh. A.) The publication of notice to potential
 24 claimants includes both an online and print component, with the print component
 25 focused in the geographic area with the largest concentration of Receivership Entity
 26 investors and the location of the Entities’ principal place of business. (Motion 6:20–
 27 7:5.) The Receiver’s proposed deadline for submitting claims—60 days after the
 28 publication of notice—provides a sufficient amount of time for claimants to receive

1 and complete the Claim Form. Finally, the procedures allow investors and creditors
2 who dispute the Receiver's recommendations to present disputed claims to the Court
3 with a full and fair opportunity to be heard. (*Id.* 4:9–20.) Overall, the Court finds that
4 these procedures provide fair notice of the claims process, and serve the interest of
5 the investors and creditors. The summary procedures are approved.

6 **CONCLUSION AND ORDER**

7 For the foregoing reasons, the Court **GRANTS** the Receiver's motion in its
8 entirety and **ORDERS** the following:

9 1. The Receiver's use of summary procedures for the determination of
10 claims against the estate of the Receivership Entities, as detailed in the Motion, is
11 authorized and approved;

12 2. The Receiver's proposed means of noticing prospective claimants,
13 including via his website, email, mail, and by publication of a notice of the claims
14 process in the San Diego Union-Tribune within ten (10) days of this order, and as
15 detailed further in the Motion, is authorized and approved;

16 3. A claims bar date of sixty (60) days after the date of the Receiver's
17 publication of notice of the claims process, as referenced in Paragraph 2, above, is
18 hereby established; and

19 4. The notice and instructions, and claim form, attached to the Motion
20 collectively as Exhibit A are approved.

21 **IT IS SO ORDERED.**

22 **DATED: February 27, 2017**

23
24 
Hon. Cynthia Bashant
United States District Judge

25

27

28